STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 99-446

August 1, 2000

BANGOR HYDRO-ELECTRIC COMPANY
Request for Approval of Tariff Revision for
New Transmission & Distribution Rate for
HoltraChem Manufacturing Company, L.L.C.

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

We approve the Second Amendment and Third Amendment to Rate Agreement between Bangor Hydro Electric Company (BHE) and HoltraChem Manufacturing Company, L.L.C. (HoltraChem or HMC). The Amendments effectively unbundle generation service from the original Rate Agreement, extends the term of the agreement from February 29, 2000 to February 28, 2001, adjust the security requirement to reflect that BHE now provides T&D service rather than bundled electric service, and permit HoltraChem to elect not to interrupt T&D service provided HoltraChem reimburses BHE for BHE's incremental T&D costs incurred because HoltraChem does not interrupt.

II. BACKGROUND

On June 28, 1999, BHE filed with this Commission a request for approval of a Tariff Revision for New Transmission and Distribution Rate for HoltraChem. BHE had not reached a final agreement with HoltraChem but made the filing to provide adequate notice to all parties of the need to develop a new transmission and distribution rate prior to March 1, 2000. On July 22, 1999, HoltraChem filed a petition to intervene. On February 29, 2000, BHE withdrew its filing so it would not take affect on March 1, 2000 and requested an extension to negotiate an amendment with the understanding that BHE would either execute an amendment prior to HoltraChem's next scheduled meter reading which would retroactively apply to service provided beginning March 1, 2000 or petition this Commission to resolve the dispute under 35-A M.R.S.A. §703(3-A). It included a draft of its proposed Second Amendment to Rate Agreement with its filing.

On March 1, 2000, BHE filed an executed Second Amendment to Rate Agreement dated February 29, 2000 by and between BHE and HoltraChem. The Second Amendment serves to extend the underlying HMC/BHE Rate Agreement dated December 12, 1996 (and as amended by Amendment No. 1 of HMC/BHE Rate

Agreement executed July 25, 1997) by a term of one year for the provision of delivery services.[1]

On March 31, 2000, the Acting Director of Technical Analysis issued an Order Granting Temporary Approval of Contract Amendment. The Temporary Order allowed the Second Amendment to go into effect pending further review but kept the docket open to allow for the more thorough review of the terms of the amendment.

On July 12, 2000, BHE filed the Third Amendment to Rate Contract as agreed to by itself and HoltraChem. BHE sought immediate review and approval of the Third Amendment and final approval of the Second Amendment. The parties entered into the Third Amendment to address certain security interest, interruptibility and revenue sharing issues. The non-revenue sharing portion of HoltraChem's T&D special rate remain governed by the Second Amendment.

Under the Original Agreement, BHE provided HoltraChem with bundled electric services. Also pursuant to that agreement, HoltraChem provided BHE with a $1,000,000 letter of credit as security for payment for such services. Subsequent to March 1, 2000, BHE no longer provides HoltraChem with generation services and consequently, the amount of HoltraChem's monthly bill for T&D services has declined. Therefore, the Third Amendment reduces the required amount of the letter of credit to an amount that is currently adequate to secure payment of HoltraChem's T&D billings by BHE.[2] Currently HoltraChem has secured generation from a competitive energy provider. The Third Amendment takes into account the possibility that HoltraChem may elect in the future to obtain Standard Offer service. If that occurs, HoltraChem has agreed to deliver an additional letter of credit for the benefit of BHE to secure payment of HoltraChem's generation service obligations.

Additionally, the Third Amendment makes changes related to interruption of service to HoltraChem. Under the Original Agreement and the Second Amendment, HoltraChem was obligated to interrupt its load upon BHE's request. However, there was no contractual right for HoltraChem to continue operating subject to certain financial penalties. The Third Amendment allows HoltraChem to elect not to be interrupted, but in exchange, to become subject to certain financial penalties. Specifically, HoltraChem agrees that to the extent that BHE incurs charges for transmission services under the NEPOOL OATT directly related to purchases of energy by HoltraChem during the Curtailment Period, such charges shall be billed to and paid by HoltraChem.

Finally, the Third Amendment revises the Original Agreement and Second Amendment so that the provision regarding minimum and maximum revenue sharing

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[1] The 1996 special contract was approved in Docket 96-126, and the 1997 amendment was approved in Docket No. 97-707.

[2] The specific amount is subject to Temporary Protective Order No. 1.

would become applicable on a monthly basis rather than a quarterly basis. BHE anticipates that the monthly period will smooth the stream of revenues from HoltraChem.

III. DECISION

Effective March 1, 2000, BHE no longer provides generation service to HoltraChem. On that same date, HoltraChem began receiving generation service from a competitive energy provider.[3] By the Second and Third Amendments, BHE and HoltraChem effectively agree to extend the special rate contract for one year at a T&D special rate that is the original special rate minus HoltraChem's current generation service rate.

The original special rate contract with HoltraChem was based upon economic need rather than generation deferral. As such, the parties agreed to a revenue sharing component to the special rate so that as HoltraChem's economic need diminished, HoltraChem paid more to BHE. HoltraChem paid less as economic need increased. We agree with BHE that the reasons justifying HoltraChem's special rate contract continue and that it is reasonable for BHE to extend the special rate contract beyond March 1, 2000 at essentially the same terms as before. BHE, however, must do so as a T&D utility rather than a vertically integrated electric utility.

As HoltraChem diligently obtained its generation service from the competitive energy provider, and the generation rate appears reasonable, the new T&D special rate, based upon the original special rate unbundled from the reasonable generation service rate, is likewise reasonable. The revenue sharing arrangement will continue to adjust HoltraChem's need for the special rate automatically as HoltraChem's economic need fluctuates.

The changes to reflect the reduced need for security as a T&D utility and the adjustment for monthly rather than quarterly revenue sharing are also reasonable. The change as to service interruption, however, requires one condition. The new provision that permits HoltraChem to not interrupt provided HoltraChem pays BHE's incremental T&D costs is reasonable and protects BHE as a T&D-only utility. At the present time, however, BHE provides standard offer service. BHE has planned its wholesale power requirements for standard offer service assuming HoltraChem is not on standard offer service. If HoltraChem were to switch to standard offer service, the implications of the contractual change permitting HoltraChem to avoid interruption may be very different. Accordingly, we will condition our approval of the Second and Third Amendments on HoltraChem remaining off standard offer service. If HoltraChem does revert to standard offer service, then further Commission review and approval of the Third Amendment will be required.

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[3] The rate for generation service that HoltraChem receives from the competitive energy provider is also subject to Temporary Protective Order No. 1.

Accordingly, pursuant to 35-A M.R.S.A. § 703(3-A), we approve the Second and Third Amendments to Rate Agreement, subject to the condition described above.

Dated at Augusta, Maine, this 1st day of August, 2000.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

THIS ORDER HAS BEEN DESIGNATED FOR PUBLICATION

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.